



TITLE 9. CALIFORNIA DEPARTMENT OF MENTAL HEALTH

ACTION: NOTICE OF PROPOSAL TO ADOPT REGULATIONS

SUBJECT: MEDI-CAL SPECIALTY MENTAL HEALTH SERVICES

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Mental Health (DMH) proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

WRITTEN COMMENT PERIOD: Any interested person, or their authorized representative, may submit comments relevant to the action described in this notice. Any written statements, arguments, or contentions must be received by the Office of Regulations, California Department of Mental Health, 1600 Ninth Street, Room 150, Sacramento, CA 95814, by 5:00 p.m. on **September 16, 2005**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments may be transmitted via facsimile 916-654-2440 or electronic mail DMH.Regulations@dmh.ca.gov and must be received before 5:00 p.m. on the last day of the public comment period. All comments, including electronic mail or facsimile transmissions, should include the author's name and U.S. Postal Service mailing address in order for DMH to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

PUBLIC HEARING: DMH will hold a public hearing commencing at 1:30 p.m. on September 16, 2005, in the Auditorium at 744 P Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest/Policy Statement Overview. DMH requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Reasonable accommodation or sign language interpreting services at a public hearing will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period.

WEB SITE: This public notice, the regulation text, the initial statement of reasons, and other related documents, are available from the DMH world wide web site http://www.dmh.ca.gov/Admin/regulations/rulemaking_pkgs.asp

CONTACT: Inquiries concerning the rulemaking process described in this notice may be directed to Steve Appel, Chief, Office of Regulations, by electronic mail DMH.Regulations@dmh.ca.gov or telephone 916-654-4027. The backup contact person is Nancy Christenson, Office of Legal Services at 916-654-2319. Inquiries concerning the substance of the rulemaking may be directed to Rita McCabe-Hax, Chief, Medi-Cal Policy and Support at 916-651-9370.

Hearing impaired persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 800-735-2929, if you have a TDD; or 800-735-2922, if you do not have a TDD.

HISTORY: Three Notices of Proposal to Adopt Permanent Regulations were published in the California Regulatory Notice Register on November 14, 1997, November 6, 1998 and December 20, 1999. The public comment periods ended on January 15, 1998, December 21, 1998, and December 20, 1999, respectively. The Department was unable to complete the rulemaking process.

As a result of extensive public comment, it was determined that the best course of action would be to adopt new permanent regulations. Therefore, the Department is re-issuing the Notice of Proposal to Adopt Permanent Regulations. The emergency regulations identified above are in effect until June 30, 2006, or until the permanent regulations are adopted, whichever comes first (Welfare and Institutions Code, Section 5775(f)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: Existing law (Welfare and Institutions Code Section 5775 (f)) provides regulatory authority for implementation of Section 1810.100, et seq., Title 9 California Code of Regulations. It is intended that, upon the adoption of the new regulations put forth in this package, existing regulations in Title 9 Section 1810.100, et seq. will be replaced.

Assembly Bill (AB) 757 (Chapter 633, Statutes of 1994) enacted laws dealing with the provision of specialty mental health services to California's Medicaid (Medi-Cal) program beneficiaries. The statute provides for the phased implementation of managed mental health care through fee-for-service or capitated rate contracts with mental health plans (MHPs). It designates the Department of Mental Health, to the extent permitted by federal law, as the state agency responsible for developing and implementing MHPs. The design of managed care for California's Medi-Cal mental health program includes three steps, to be phased in over several years.

The first phase was the Medi-Cal psychiatric inpatient hospital services consolidation, as authorized by statute and based on the authority granted by a federal freedom of choice waiver under Section 1915 (b) of the Social Security Act, effective March 17, 1995. The Department adopted regulation sections 1700 through 1799 inclusively, in Chapter 10, in Division 1, Title 9, California Code of Regulations (CCR), entitled "Medi-Cal Psychiatric Inpatient Hospital Services."

This waiver was renewed and modified on September 5, 1997, to include the second phase, "Medi-Cal Specialty Mental Health Services Consolidation," with implementation beginning November 1, 1997. The Centers for Medicare and Medicaid Services (CMS) approved the renewal, modification and renaming of this waiver as the Medi-Cal Specialty Mental Health Services Consolidation waiver program on September 5, 1997, a second renewal on November 16, 2000, and a third renewal on April 24, 2003. The waiver program as approved April 24, 2003 was in effect through April 27, 2005. The State's fourth waiver renewal was approved on April 26, 2005, to be in effect April 1, 2005 through March 31, 2007. CMS may approve additional renewals for subsequent two-year periods.

The Department will permanently adopt regulation sections 1810.100 through 1850.535 inclusively, in a new Chapter 11, in Title 9, Division 1, CCR, entitled "Medi-Cal Specialty Mental Health Services." This includes psychiatric inpatient hospital services consistent with Chapter 10, and new standards for additional services including rehabilitative mental health services, targeted case management, psychiatrist services, psychologist services, EPSDT supplemental specialty mental health services, and psychiatric nursing facility services. Chapter 11 implements, interprets and makes specific the requirements brought about by the changes in the law cited above for the second phase of the Medi-Cal managed mental health care program. The final implementation phase will be capitation, to be phased in at a later date.

SUBCHAPTER 1

Article 1, Sections 1810.100 through 1810.110, describes laws that affect the Medi-Cal Specialty Mental Health Services Consolidation program. Article 2, Sections 1810.201 through 1810.254, defines words that are used in these regulations to make sure their meanings are clear. Article 3, Sections 1810.305 through 1810.385, explains that the MHP needs to submit an implementation plan, which services are covered, how the Department and the MHPs work together, how to inform beneficiaries regarding available services and beneficiary rights. Article 4, Sections 1810.405 through 1810.440, describes how beneficiaries, even if they speak a language other than English, obtain quality services.

SUBCHAPTER 2

Article 1, Sections 1820.100 through 1820.120, describes how MHPs and the Department determine how much to pay for psychiatric inpatient hospital services. Article 2, Sections 1820.200 through 1820.230, describes how psychiatric inpatient hospital services are delivered, when the MHP has to cover hospital services, and what hospitals have to do to get paid by the MHP.

SUBCHAPTER 3.

Section 1830.100 explains that services in this subchapter are services other than psychiatric inpatient hospital services. Articles 1 and 2, Sections 1830.105 through 1830.250, explain when the MHP has to cover services by psychiatrists and other mental health service providers. These articles also cover when the MHP can require the provider get MHP approval before the provider provides the service to a beneficiary,

how providers get paid, and when beneficiaries may chose their own providers and when the MHP may choose the provider. There is a special rule for beneficiaries under 21 years of age, which means these beneficiaries may receive or be eligible for additional services.

SUBCHAPTER 4.

Article 1, Sections 1840.100 through 1840.115, explains in general how MHPs can get federal money. Article 2, Sections 1840.205 through 1840.215, explains how the MHP gets federal money for hospital services the MHP has provided to beneficiaries. The MHP can get federal money only if the MHP follows the rules in this article. These rules apply to the types of hospitals and the kinds of services the beneficiary might be getting at the same time the beneficiary is in the hospital. Article 3, Sections 1840.302 through 1840.374, explains how the MHP gets federal money for different services, from different kinds of providers. These guidelines are not covered in other regulations. The MHP can get federal money only if the MHP follows the rules in this article about when and where the services are given and who delivers the services.

SUBCHAPTER 5

Sections 1850.205 through 1850.535 explain how MHPs must handle problems with beneficiaries, providers, other MHPs and Medi-Cal managed care plans.

AUTHORITY: Sections 14680, Welfare and Institutions Code.

REFERENCE: Sections 1340 et seq., Health and Safety Code; Sections 5520, 5705, 5718, 5720, 5724, 5775, 5776, 5777, 5777.5, 5778, 5779, 5780, 5781, 10950-10965, 11400, 14000, 14005, 14007.5, 14011, 14021.3, 14021.4, 14021.5, 14104.3, 14105.98, 14132, 14142, 14145, 14640, 14680, 14681, 14682, 14683, 14684, 14685, and 16115, Welfare and Institutions Code; Title 42, Sections 1396d(a), 1396d(i), 1396d(r), and 1396r-4, United States Code; Title 42, Code of Federal Regulations, Part 438; Title 42, Code of Federal Regulations, Sections 431,244, 433.51, 455.18; and T.L. v. Belshé, United States District Court, Eastern District of California, Case No. CV-S-93-1782 LKK PAN.

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REFERENCE: Sections 1340 et seq., Health and Safety Code; Sections 5520, 5705, 5718, 5720, 5724, 5775, 5776, 5777, 5777.5, 5778, 5779, 5780, 5781, 10950-10965, 11400, 14000, 14005, 14007.5, 14011, 14021.3, 14021.4, 14021.5, 14104.3, 14105.98, 14132, 14142, 14145, 14640, 14680, 14681, 14682, 14683, 14684, 14685, and 16115, Welfare and Institutions Code; Title 42, Sections 1396d(a), 1396d(i), 1396d(r), and 1396r-4, United States Code; Title 42, Code of Federal Regulations, Part 438; Title 42, Code of Federal Regulations, Sections 431,244, 433.51, 455.18; and T.L. v. Belshé, United States District Court, Eastern District of California, Case No. CV-S-93-1782 LKK PAN.

PRE-NOTICE PUBLIC DISCUSSIONS: The Department involved members of the public in discussions prior to publication of this notice. The previously proposed rulemaking, in which this rulemaking is based, incorporated extensive public comment and input from stakeholders.

MATERIAL INCORPORATED BY REFERENCE: American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington, D.C., American Psychiatric Association, 1994. A copy may be purchased from the Division of Publications and Marketing, American Psychiatric Association, 1400 K Street, N.W., Washington, D.C., 20005. A copy may be examined at the Department of Mental Health, Managed Care Implementation, 1600 9th Street, Room 100, Sacramento.

Publication 15-1, Medicare Provider Reimbursement Manual, PB 97-954800. A copy may be purchased through the National Technical Information Service, Springfield, Virginia, by calling (703) 605-6060. The online version may be downloaded from the CMS website at http://www.cms.hhs.gov/manuals/pub151/pub_15_1.asp? Also refer to Section 51516(a)(2) of Title 22, CCR.

FISCAL IMPACT ESTIMATE:

A. Fiscal Effect on Local Government: Funding in the amount of \$227,167,000 is included in the Budget Act of 2005 (Chapter 38, Statutes of 2005) to reimburse the local mental health plans for the provision of mental health treatment services. Most of this funding can be used by local government (mental health plans) to provide the match requirement for Title XIX (Medi-Cal).

Additional expenditures in the current fiscal year are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation is issued only in response to a specific request from the counties contracting with the Department of Mental Health pursuant to Section 5775 et seq., W&I Code, which are the only local entities affected.

The Budget Act of 2005 includes total expenditures of \$446,584,000 (\$227,167,000 General Fund and \$219,417,000 in Federal Financial Participation).

B. Fiscal Effect on State Government: The Budget Act of 2005 includes a total expenditure \$446,584,000 (\$227,167,000 General Fund and \$219,417,000 in Federal Financial Participation) that will be allocated to the local mental health plans to support mental health treatment services for Medi-Cal eligible beneficiaries.

C. Fiscal Effect on Federal Funding of State Programs: The Budget Act of 2005 includes funding in the amount of \$219,417,000 in Federal Financial Participation.

D. Fiscal Effect on Private Persons or Businesses Directly Affected: The businesses directly affected by these regulations include managed care organizations and other entities that may have an opportunity to compete for contracts if county mental health departments elect not to accept contracts. The fiscal effect on these entities is indeterminate; since it cannot be determined whether an opportunity to contract will be available or how successful a business would be in obtaining and operating such a contract. There will be no fiscal impact on Medi-Cal beneficiaries, the persons directly affected by these regulations, since the regulations do not change current Medi-Cal laws and/or regulations regarding beneficiaries' fiscal obligations under the program.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations would not impose other non-discretionary cost or savings on local agencies.

The Department has determined that the regulations would not have a significant effect on housing costs.

The Department has determined that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

The creation or elimination of jobs within the State of California.

The creation of new businesses or the elimination of existing businesses within the State of California.

The expansion of businesses currently doing business within the State of California.

The Department finds that it is necessary for the health, safety, or welfare of the people of this state that regulation sections 1810.310, 1810.341, 1810.375, 1810.380, 1810.385, 1810.438, 1820.215, 1830.250, 1840.105, and 1840.316, which require reports, apply to businesses.

The Department has determined that these regulations will affect small businesses (Medi-Cal providers) in California because they establish new requirements for participation in the Medi-Cal program for the delivery of specialty mental health services. The Medi-Cal Specialty Mental Health Services program does not impose a mandate on hospitals and mental health professionals to participate, nor does it impose

a mandate on MHPs to allow any willing hospital and mental health professional to affiliate with the MHP. Hospitals and mental health professionals who affiliate with the MHP may see either an increase or a decrease in the number of Medi-Cal beneficiaries they treat and in Medi-Cal revenues, depending on the terms of the specific relationship they establish with each MHP. Hospitals that do not affiliate with the MHP may provide psychiatric inpatient hospital services to Medi-Cal beneficiaries in emergency situations and at rates established by these regulations, which will result in an indeterminate decrease in Medi-Cal revenues. Mental health professionals who do not affiliate with the MHP may continue to participate in the fee-for-service Medi-Cal program; but may provide only those specialty mental health services not covered by the MHPs; which is likely to result in a decrease in Medi-Cal beneficiaries served and Medi-Cal revenues.

AVAILABILITY OF STATEMENT OF REASONS AND REGULATION TEXT: DMH has prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the regulations. These documents are posted on the DMH web site. A copy of the initial statement of reasons and the text of the regulations are available upon request to the Office of Regulations at the address noted above. This address will be the location of public records, including reports, documentation, and other material related to the regulations.

AVAILABILITY OF THE CHANGED OR MODIFIED REGULATION TEXT:

After considering all timely and relevant comments received, DMH may adopt the regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DMH adopts the regulations. Any modifications will also be posted on the DMH web site. Requests for copies of any modified regulations should be directed to Steve Appel, Office of Regulations, at the address indicated above.

CONSIDERATION OF ALTERNATIVES: In accordance with Government Code Section 11346.5(a)(12), DMH must determine that no alternative considered by DMH would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than this action.